

their registration fees is not significant. The fee for CPOs and CTAs remains unchanged. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant impact on a substantial number of small entities.

III. List of Subjects in 17 CFR Part 3

Registration fees, form of remittance.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Section 8a, 7 U.S.C. 12a, and in Section 26 of the Futures Trading Act of 1978, 92 Stat. 877, 7 U.S.C. 16a (Supp. V 1981), as amended by Section 237 of the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2326 (Jan. 11, 1983), the Commission hereby amends Part 3 of Chapter 1 of Title 17 of the Code of Federal Regulations. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 3—REGISTRATION

1. Section 3.3 is revised to read as follows:

§ 3.3 Registration fees; form of remittance.

(a) *Amount of fees.* (1) *Futures commission merchants.* Each application for registration, or for renewal thereof, as a futures commission merchant must be accompanied by a fee of \$275.

(2) *Commodity trading advisors and commodity pool operators.* Each application for registration, or for renewal thereof, as a commodity trading advisor or commodity pool operator must be accompanied by a fee of \$50.

(3) *Associated persons.* Each Form 8-R submitted in connection with the registration of an associated person of a futures commission merchant, commodity trading advisor, or commodity pool operator must be accompanied by a fee of \$35.

(4) *Floor brokers.* Each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of \$25.

(5) *Branch offices.* A fee of \$6 must be provided for each branch office of a registrant operating within the United States, as specified in any Form 7-R or any Schedule thereto or in any Form 3-R filed with the Commission to report the addition of a branch office. The fee specified by this paragraph (a)(5) must accompany each Form 7-R filed as an

application for initial registration or for renewal of registration and each Form 3-R filed to report the addition of a branch office.

(b) *Form of remittance; fees not refundable.* Registration fees must be remitted by check, bank draft, or money order, payable to the Commodity Futures Trading Commission. All registration fees are nonrefundable.

Issued in Washington, D.C. on July 27, 1983, by the Commission.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 83-20772 Filed 7-29-83; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 127

[T.D. 83-158]

Customs Regulations Amendments Relating to Special Classes of Merchandise

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to regulate the entry of any chemical substance, imported in bulk or as part of a mixture into the customs territory of the United States. The rule also governs the importation of certain articles containing hazardous chemicals that the Environmental Protection Agency ("EPA") specifically regulates. The rule, which was developed after consultation with EPA, implements the Toxic Substances Control Act ("TSCA") by requiring the importer of a chemical shipment to certify at the port of entry that either the shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry Examination and Liquidation Branch, Duty Assessment Division, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; 202-566-8651, or Jack McCarthy, Director, TSCA Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-511B, 401 M Street, SW., Washington, D.C. 20460; 800-424-9065 (Toll Free), calls within the District of Columbia 554-1404, outside the United States: Operator-202-554-1404.

SUPPLEMENTARY INFORMATION:

Background

The Toxic Substances Control Act ("TSCA"), Pub. L. 94-469, approved October 11, 1976 (15 U.S.C. 2612), was enacted by the Congress to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes. Section 13, TSCA, directs the Secretary of the Treasury, after consultation with the Administrator, Environmental Protection Agency ("EPA"), to refuse entry into the customs territory of the United States (the "customs territory") of any chemical substance, mixture, or article containing a chemical substance or mixture that:

1. Fails to comply with any rule in effect under TSCA, or
2. Is offered for entry in violation of section 5 or 6, TSCA, a rule or order issued under section 5 or 6, or an order issued in a civil action brought under section 5 or 7, TSCA.

Section 13 further provides that if a chemical substance, mixture, or article is refused entry, the Secretary shall notify the consignee of the entry refusal, not release the shipment, except under bond, and cause its disposal or storage under such rules as the Secretary may prescribe if the shipment has not been exported by the consignee within 90 days from the date of receipt of the notice of entry refusal.

To implement the provisions of section 13, by notice published in the *Federal Register* on December 1, 1980 (45 FR 79730), Customs and EPA proposed amendments to Parts 12 and 127, Customs Regulations (19 CFR Parts 12, 127), to regulate the entry of any chemical substance, imported in bulk or as part of a mixture into the customs territory. The rule also governs the importation of certain articles containing hazardous chemicals that EPA specifically regulates. On the same date, by notice published in the *Federal Register* (45 FR 79726), EPA issued a proposed policy statement concerning its responsibilities under the proposed rule.

Numerous comments were received by EPA and Customs in response to the above proposals. While most commenters agreed with the objectives of the proposed rule, the following concerns were expressed.

Comments on Proposed Rule**Definition of Importer**

Comment: The proposal defines importer too broadly. Only the consignee should sign the certification statement required by proposed § 12.121.

Response: The language of section 13 refers to liability of the owner and consignee. These are two of the possible importers who may sign the certification statement. The rule uses the broader Customs definition of importer for several reasons. (1) As a practical matter, since the rule involves entering goods through Customs, allowing the person who normally acts as the importer for Customs transactions (i.e., importer of record) to sign the certification statement is least disruptive, confusing, and burdensome for industry and Customs. (2) The section 13 language encompasses all rules under TSCA, therefore the section 13 definition of importer must be broad enough to cover any TSCA definition of importer. Under other sections of TSCA the importer is defined as a manufacturer, and in some cases this importer-manufacturer may be a person other than the consignee. Thus, section 13 should not limit the importer definition to only the consignee. (3) The importer who signs the certification statement, unlike the importer responsible for other TSCA requirements such as premanufacture notification, need not be the "most" knowledgeable person about the chemical shipment, as long as he is assured that the shipment meets the requirements of TSCA. Thus, any authorized person who meets the information requirements may sign the certification statement, at the convenience of the parties to the importation.

Mechanics of Certification

Comment: The rule should allow the certification statement to be typed, stamped, or preprinted and submitted as an attachment to an appropriate entry document or commercial invoice.

Response: In developing the proposal, EPA and Customs considered whether the certification statement should appear on an existing or on a separate and new entry document. To avoid creating additional paperwork at the port of entry, the proposed rule stated that the certification statement should appear on an existing entry document. The proposal specified that the statement be typed for legibility. We considered that the importer would ordinarily type and sign the statement on an entry document or invoice in the course of business in arranging for the

import. However, we agree with the comment and have changed the rule to allow the importer the options of having the certification statement typed or stamped on an existing entry document or invoice, or on a preprinted attachment to an entry document or invoice.

Comment: Facsimile signatures should be allowed, particularly for repeat shipments.

Response: We agree with this comment, and have added a new paragraph (c) to proposed § 12.121.

Comment: The rule should not be effective until 90 days after publication so that goods ordered before the effective date can clear ports of entry and importers can educate themselves and foreign suppliers of the rule's requirements.

Response: The time a shipment leaves a port should have no bearing on the effective date. Importers are presently aware that all shipments of chemical substances must be in conformance with TSCA rules and they are merely being asked to certify that fact after the shipment arrives. However, to allow sufficient time to review the requirements, we are providing additional time before the effective date.

Comment: The rule should address the problem of shipments of chemicals on which TSCA rules are promulgated during shipment.

Response: Importers should be aware of proposed TSCA rules to be able to comply when a rule becomes final. The additional days between promulgation and effective date should allow sufficient time for importers to determine how a rule applies to a particular importation.

Comment: Because the proposed certification does not require information to be submitted to either EPA or Customs, description of the scope of the certification should not say all required information submittals are complete and accurate.

Response: We agree with this comment, and have changed the certification accordingly.

Comment: Proposed § 12.121 should specify reasonable steps an importer must take to be assured that a chemical substance and its import comply with TSCA. The certification statement should include the language that it is "based on inquiries in conformance with 19 CFR 12.121."

Response: Customs and EPA disagree. Proposed § 12.121 is properly limited to activities involving actual entry of chemical shipments which fall within the enforcement jurisdiction of Customs. It is beyond the scope of the proposed regulations to set forth the procedures

that an importer must take before entry to ensure an import's technical compliance with TSCA. These procedures are explained in the EPA policy statement to be published soon.

Comment: The rule should clarify that all chemical products entered under Schedule 4, Tariff Schedules of the United States (TSUS), require TSCA certification.

Response: Many—but not all—chemical substances as defined under TSCA would be entered under Schedule 4, TSUS. For example, chemicals or mixtures imported as metal-bearing ores under Schedule 6, TSUS, would require TSCA certification. Not all imports under Schedule 4, TSUS, are chemical substances requiring certification under TSCA. For example, chemicals imported as pesticides under items 408.16–408.38, TSUS, would not require TSCA certification. Importers may contact the EPA Regional Office or the EPA TSCA Assistance Office to determine whether a specific chemical intended for importation is subject to TSCA.

Detention

Comment: The proposal would allow detention at the port of entry for noncompliance arising from TSCA sections 5, 6, or 7, or "as otherwise directed by the Administrator." The rule should state the other circumstances that would cause the Administrator to direct that a shipment be detained.

Response: EPA has determined that detention would invariably result from noncompliance with TSCA section 5, 6, or 7. Thus, the language regarding detention "as otherwise directed by the Administrator," is deleted.

Comment: The rule should specify the "reasonable grounds" on which a shipment would be detained at the port of entry. There should be good cause, not mere suspicion of noncompliance to detain a shipment.

Response: The rule allows for detention at the port of entry when a certification statement is missing, or when there are reasonable grounds to believe that a shipment does not comply with TSCA. "Reasonable grounds" means there is an objective reason to believe that a shipment does not comply. This reason will be specified in the detention notice.

Comment: The reasons for detention and the remedial actions to be taken to have a shipment released, should be included in the detention notice.

Response: The proposal states that the detention notice shall include the reasons for detention. The importer may get assistance from EPA in determining the remedial actions to be taken to bring

the shipment into compliance. This is specified in the EPA policy statement.

Comment: The importer should be promptly notified of detention by telephone, followed by written notice.

Response: It is Customs policy to promptly notify the importer or his agent when it is determined that a shipment may not be released from Customs custody. However, because of local conditions it may not be practical to notify by telephone. Therefore, the method of notification should be left to local Customs officials in accordance with local practice.

Comment: EPA should simultaneously notify Customs and the importer of its decision regarding the compliance status of detained shipments.

Response: EPA agrees with this comment and will do so.

Comment: Some commenters stated that the importer should be notified of detention by Customs within 48 or 72 hours, rather than given "prompt" notice as proposed.

Response: Customs disagrees. The establishment of a specific time limit or deadline within which Customs must notify the importer of detention is arbitrary and would impose an undue administrative burden on the agency.

Comment: Detained shipments should be automatically released if EPA does not act within a specified time period.

Response: EPA will act within the specified time periods, so there is no need for an automatic release. An automatic release would not be appropriate since a purpose of section 13 is to deny entry to shipments that do not comply with TSCA, and a shipment would have been detained only if there were reason to suspect that it did not comply.

Comment: The proposal would allow importers 20 days from the date of detention to submit documentation showing why a shipment should be allowed entry. EPA must allow or deny entry within 30 days from the date of detention.

A commenter pointed out that if the importer takes 20 days to submit information, only 10 days remain for EPA to determine whether the importation should be allowed. Also, there is no advantage for an importer to make his submission in fewer than the allowed 20 days, since the earlier an importer does so, the more time would remain in the 30 days from detention within which EPA must respond. The commenter suggested the rule state that EPA allow or deny entry within 10 days after the importer submits his materials. This change would not alter the length of time for EPA's response, but would allow the importer who files promptly to

receive a more prompt response from EPA.

Response: EPA agrees. The final rule provides that EPA will decide to allow or deny entry within 10 days of receipt of the importer's submission, or within 30 days from the date of detention, whichever comes first.

Comment: There were several comments about time limits. One commenter said the rule should allow the importer 90 days after notice of refusal of entry, rather than 90 days after notice of detention, to bring the shipment into compliance or export it. The importer would not begin planning export until at least 30 days after the notice of detention, when the goods would be denied entry.

Another commenter said importers should be allowed 60 days from the date of redelivery demand to bring a shipment into compliance or export it. There should not be a time disadvantage for shipments released on bond.

According to the comment, the time disadvantage may be an incentive to abandon goods.

Response: Customs believes that 90 days after notice of detention gives the importer sufficient time to bring the shipment into compliance or export it.

Comment: Three extensions should be allowed when the importer is delayed in complying with TSCA for causes beyond his control, such as delays caused by EPA or Customs.

Response: Customs disagrees. The proposal grants an extension of 30 days, if due to delays caused by Customs or EPA, the importer is unable to bring a shipment into compliance with TSCA, or is unable to export it within the required time. Customs believes that one time extension is sufficient under the circumstances. Any additional extensions would be excessive and frustrate the intent of the Act.

Enforcement

Comment: The proposed rule and policy statement allow both EPA and Customs to take enforcement action. This unnecessarily requires establishing two separate Government enforcement mechanisms for the same violation, increases the importer's potential liability, and causes an importer to deal with two separate agencies in enforcement matters. One comment suggested that one of the agencies should state a policy of deferring to the other, except in cases of deliberate violation.

Response: Depending on the circumstances, EPA or Customs or both may take enforcement action under TSCA. However, Customs enforcement responsibilities will end with its release

of the merchandise unless entry is made under a "use" provision of the TSUS. This will not necessarily require two separate enforcement mechanisms for the same violation, since in many cases it would be appropriate for only one agency to act. This does not increase the importer's potential liability both under TSCA and under Customs statutes and regulations.

Comment: It is not clear how Customs will verify the certification statement.

Response: Generally, Customs will not verify a certification statement. However, EPA intends to investigate the accuracy of some certification statements. In addition, if there is reason to believe that a certification is false, EPA or Customs will investigate as with any suspected false statement made in connection with an entry.

Scope

Comment: Congress intended section 13 only for Customs to prevent the importation of hazardous chemicals, not for EPA to use as a tool for the overall enforcement of TSCA.

Response: Section 13 prohibits the importation of any chemical that "fails to comply with any rule in effect under this Act." Thus, section 13 is intended as a tool for enforcement of all TSCA import provisions. While the TSCA directs the Secretary of the Treasury to refuse entry of chemical imports that do not comply with TSCA requirements, as a practical matter, EPA—rather than Customs—will ultimately determine whether an import complies.

Who Should Certify?

Comment: Comments were mixed on whether an agent or broker should certify an import's compliance with TSCA. Some comments said brokers should not be required to sign the certification statement because they do not have sufficient information regarding the shipment.

Other comments said brokers should be able to sign the certification statement on behalf of the actual user of the chemical import. The broker could rely on a bona fide certification from the importer with sufficient knowledge of the shipment.

Response: EPA agrees that a broker can certify based on information obtained from his principal in the ordinary course of business.

Comment: An individual who certifies on behalf of an importing company should not be personally liable for false statements. Penalties should apply only to the corporate entity.

Response: TSCA section 16 describes penalties that "any person" who

violates the Act may incur. Although TSCA does not explicitly define "person," the term as used in the Act clearly includes individuals or agents. However, EPA recognizes that an agent may not be responsible for a violation and that the principal may be held liable.

Comment: The importer should be able to fulfill his obligations by presenting a certification from the foreign manufacturer that the chemical substance complies with TSCA.

Response: EPA disagrees. The foreign manufacturer is not under TSCA's jurisdiction and thus cannot be held liable for noncompliance. The responsibility to certify is the importer's. His responsibility may not be completely discharged with a certification from the foreign manufacturer if it is determined that a shipment does not comply.

Chemicals Subject to Certification

Comment: Comments requested exemptions from certification for several categories of chemical substances: (a) Those unintentionally present in the import shipment, such as byproducts, coproducts, and impurities; (b) small quantities for research and development (as defined by Inventory criteria at 40 CFR 710.2(y)); (c) samples imported for testing; and (d) chemicals subject to significant new use requirements.

Response: The importer must look to a TSCA section 5, 6, or 7 rule or order to determine whether the above exemptions apply. For example, presently section 5 requirements exempt importers from submitting premanufacture notices on byproducts or impurities provided they are not imported for separate commercial purposes. Thus, the importer would be required to determine the compliance status under section 5 only for chemical substances intentionally present in the shipment. The importer's certification would mean that the intentional import complied with section 5, and that any unintentionally present chemicals also complied with section 5 simply because they were exempt from these requirements.

Similarly, small quantities for research and development are now also exempt from section 5 requirements. For such imports, the importer's certification statement might be based on information from the consignee that the shipment is intended only for research and development. In this situation, the importer could truthfully certify that the shipment complies with TSCA, without need to determine if the imported chemicals are on the TSCA Inventory.

Research and development includes quality control testing, and testing for the development of a product. If samples are imported only for testing, the samples would be considered as research and development chemicals.

When EPA promulgates significant new use rules, importers will be responsible for determining whether their imports contain chemicals subject to the rules. If so, the importer must ascertain that the intended use of the chemical complies with TSCA.

Comment: Several commenters stated that the certification statement should include language about chemicals exempted from TSCA. They are concerned that there is potential for confusion at the port of entry because some chemical shipments obviously will not be subject to TSCA. For example, chemicals imported solely for use as pharmaceuticals or pesticides are not chemical substances, or articles under TSCA requiring certification. It is suggested that the certification contain an exemption clause for these articles, or that a separate non-TSCA certification statement be required to help Customs identify TSCA and non-TSCA imports, so as to avoid potentially delaying entries.

Response: We agree. Accordingly, the rule is changed to require importers of non-TSCA regulated chemicals to certify that their shipments are not subject to TSCA. The authority for requiring this negative certification is found in 19 U.S.C. 1484 and 1485.

Meaning and Basis for Certification

Comment: The wording of the certification statement should include compliance only with TSCA sections 5, 6, and 7, instead of "all rules" under TSCA because the certification does not cover TSCA section 4 or 8.

Response: The language of the certification has been changed to read "all applicable rules and orders under TSCA."

Comment: The proposed certification statement is redundant. The importer should not need to certify both that the imported chemicals "comply with all rules under TSCA" and that he is "not offering a chemical substance for entry in violation of TSCA or any order under TSCA."

Response: The certification statement was constructed to parallel the language in TSCA section 13(a)(1) (A) and (B). The requirements under section 13(1)(a) pertain to the commodity itself, such as the requirements for PCB's under section 6. The requirements under section 13(1)(B) pertain to obligations imposed by or under TSCA on the importer, such as the obligation under section 5(a) to

file a premanufacture notice for "new" chemicals. The certification statement uses two separate phrases to acknowledge the distinction between requirements imposed directly on commodities, and duties imposed on importers.

Comments: Several commenters recommended changing the certification statement to reduce the potential liability of importers who may not be in a position to know the facts needed to determine whether a shipment complies with TSCA. They argue that the importer may not have the specialized knowledge to determine if the chemical supplied actually complies. Or, necessary information may be confidential and the foreign supplier unwilling to divulge it. To alleviate this problem, one recommendation was for the certification to be signed on "behalf of" the importer. Another recommendation was to allow the importer to certify "to the best of his knowledge and belief."

Response: The certification statement does not include the phrase "to the best of my knowledge and belief" because this would defeat the purpose of the certification. An importer who did not know and had made no attempt to discover whether a chemical complied with TSCA could truthfully declare that "to the best of his knowledge and belief" the shipment complied.

Special Chemical Import Report Forms

Comment: Commenters gave several reasons to delete the provision in proposed § 12.121, Customs Regulations, for the Special Chemical Import Report Form. (1) The proposed form would exceed Customs authority under section 13. The statute does not allow the Secretary of the Treasury to require importers to report information. (2) The form would be unnecessary and burdensome since EPA has the authority to require substantiation of certification on a case-by-case basis. (3) Obtaining the information on particular chemicals would not be a problem for importers unless it were also a problem for the domestically manufactured chemical. Such a rule would be an non-tariff trade barrier if it did not also apply to domestically manufactured chemicals. (4) EPA authority to issue such a form is doubtful since EPA has determined that the import certification does not apply to TSCA section 4 or 8 rules, but authority for the special import form would be under section 6 or 8. (5) No additional documents should be required at the port of entry.

Response: While EPA does not necessarily agree with these comments,

we have deleted this provision until actual need arises.

Export

Comments: Export notification should not be required for rejected entries that were never officially in the United States, and especially should not be required for chemicals that are returned to their country of origin after being denied entry. If export notice is required for such chemicals under TSCA section 12(b), it should not also be required under section 13.

Response: The language of section 13 argues that export of an entry that is rejected under section 13 is an export under section 12(b). However, after considering these comments, it has been determined that export notification is necessary only for the chemicals that are regulated under TSCA. A section 12(b) export notice will be required for a chemical denied entry only when a TSCA section 5, 6, or 7 rule or order applies to the chemical, and it is not being returned to the country of origin.

Burden

Comment: The certification requirement is burdensome and may discourage the importation of small quantities of chemicals.

Response: Customs disagrees. The certification requirement is not burdensome because the importer is already obligated to know that any chemicals imported must be in compliance with TSCA. The additional cost of certification will not discourage the importation of small quantities of chemicals.

Comment: The economic analysis should consider alternative regulatory approaches that do not include certification. It should also consider the potential costs to the public from delay at the port of entry.

Response: The economic analysis of the proposed section 13 estimated costs to importers required to certify at the port of entry, and compared these costs to alternative approaches that would not require formal certification. No significant cost differences were found to exist. The analysis also discussed the difficulties in estimating administrative costs. Even if it were possible to estimate administrative costs—such as costs of delay—that may result from noncompliance with section 13, EPA would not consider such costs appropriate to include in the economic impact analysis.

International Concerns

Comment: The EPA policy

discriminates against foreign suppliers because it does not allow exporters to maintain compositional confidentiality in all cases.

Response: EPA does not agree. The regulation does not require the foreign supplier to reveal chemical identities to anyone. The importer may choose to rely on the foreign supplier's assurance of compliance with TSCA, although this would not completely discharge the importer's responsibility. The policy does not require foreign suppliers to identify chemical imports to other persons at the entry port or elsewhere.

Among several reasons for the approach adopted, one was recognition that the chemical identities of many imports are trade secrets. EPA does not wish to require importers to obtain compositional information from their foreign suppliers when domestic processors would not be required to obtain similar information from domestic suppliers.

Comment: The section 13 requirements create unnecessary technical obstacles to foreign trade.

Response: EPA disagrees. The rule does not create obstacles since importers should already be aware of and complying with TSCA requirements pertaining to imports. The certification itself is simply a method to verify that importers are aware of and meeting their responsibilities and obligations.

Information Availability

Comments: Comments were mixed on how EPA could best distribute information on the section 13 requirements. Some commenters said that EPA lacks statutory authority to issue fact sheets, and that such fact sheets would be confusing and wasteful. Other commenters said that EPA should regularly distribute a checklist of TSCA rules for importers to distribute to their suppliers, since importers are in the best position to educate their foreign suppliers about these to U.S. embassies, U.S. Customs offices abroad, and foreign boards of trade. Fact sheets should especially include information on significant new use rules.

Response: To meet the purposes of section 13, EPA intends to make information about the requirements available by distributing fact sheets on current TSCA requirements, and by answering telephone inquiries through the EPA TSCA Assistance Office. Statutory authority is not necessary to distribute this information.

EPA does not agree that issuing fact sheets would be confusing. It would be

easier for importers and suppliers to determine compliance if a current list of all TSCA rules is available to them.

Importers are in the best position to inform their foreign suppliers of TSCA requirements, or they may wish to have their foreign suppliers receive information directly from EPA. Anyone may contact the TSCA Assistance Office to be placed on its mailing list for TSCA section 13 and other TSCA literature, including any significant new use rules. U.S. embassies, U.S. Customs offices abroad, and foreign boards of trade will automatically be placed on the mailing list.

Economic Impact Analysis Statement

Estimated costs for industry compliance with this regulation are contained in a report entitled, "Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substances Control Act," dated November, 1979. This report indicates that total cost to industry will be approximately \$2.3 million.

The economic impact study is available for review at the Environmental Protection Agency, Office of Pesticides and Toxic Substances, Reading Room, Room 447 East Tower, 401 M Street, SW., Washington, D.C. 20460.

Executive Order 12291

It has been determined that this document does not contain a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291.

Regulatory Flexibility Act

It is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of the document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service (202-566-8237). However, personnel from other Customs offices and EPA participated in its development.

List of Subjects in 19 CFR Parts 12 and 127

Customs duties and inspection, Importers, Hazardous materials, Explosives, and Freight.

Regulations Amendments

Parts 12 and 127, Customs Regulations (19 CFR Parts 12, 127), are amended as set forth below.

Alfred R. DeAngelus,

Acting Commissioner of Customs.

Approved: April 13, 1983.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

PART 12—SPECIAL CLASSES OF MERCHANDISE

Part 12, Customs Regulations (19 CFR Part 12), is amended by adding a center heading and §§ 12.118 through 12.127 to read as follows:

Chemical Substances in Bulk and as Part of Mixtures and Articles

Sec.

12.118 Toxic Substances Control Act.

12.119 Scope.

12.120 Definitions.

12.121 Reporting requirements.

12.122 Detention of certain shipments.

12.123 Procedure after detention.

12.124 Time limitations and extensions.

12.125 Notice of exportation.

12.126 Notice of abandonment.

12.127 Decision to store or dispose.

Authority: Secs. 13, 90 Stat. 2034 (15 U.S.C. 2621), R.S. 251, as amended (19 U.S.C. 86), and secs. 484, 485, 624; 46 Stat. 759 (19 U.S.C. 1484, 1485, 1624).

Chemical Substances in Bulk and as Part of Mixtures and Articles**§ 12.118 Toxic Substances Control Act.**

The importation into the customs territory of the United States of a chemical substance in bulk or as part of a mixture, or article *containing a chemical substance or mixture*, is governed by the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*), and by regulations issued under the authority of section 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency ("EPA").

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of chemical substances in bulk and as part of mixtures under TSCA.

Sections 12.120 through 12.127 also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

§ 12.120 Definitions.

Except as otherwise provided below, the terms used in §§ 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) "Article".

(1) "Article" means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2) below; except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in § 12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) "Chemical substance in bulk form" means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

§ 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the district director at the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemicals in this shipment are not subject to TSCA.

The certification, which shall be filed with the district director at the port of entry before release of the shipment, may appear as a typed or stamped statement:

(1) On an appropriate entry document or commercial invoice, or on a

preprinted attachment to such entry or invoice.

(2) On the commercial invoice or an attachment to the invoice, in the event of release under a special permit for an immediate delivery, as provided for in § 142.21 of this chapter, or entry, as provided for in § 142.3 of this chapter.

(b) *Chemical substance or mixture as part of articles.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) of this section only if required by a rule or order under TSCA.

(c) *Facsimile signatures.* The certification statements in paragraph (a) may be signed by means of an authorized facsimile signature.

§ 12.122 Detention of certain shipments.

(a) The district director at the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under section 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under section 7 of TSCA (15 U.S.C. 2606).

(b) The district director at the port of entry shall detain shipments of chemical substances, mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the district director to detain the shipment.

(2) Whenever the district director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by § 12.121.

(c) Upon detention of a shipment, the district director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

(d) A detained shipment shall not be held in the custody of the district director for more than 48 hours after the date of detention. Thereafter, the shipment shall be promptly turned over to the Administrator for storage or disposition as provided for in §§ 12.127 and 127.22(i), unless previously released to the importer under bond as provided in § 12.124(b). Notice of intent to abandon the shipment by the importer shall constitute a waiver of all time periods specified in Parts 12 and 127.

§ 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a district director under § 12.122, the importer may submit written documentation to the Administrator with a copy to the district director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator shall allow or deny entry of the shipment within 10 days of receipt of the documentation, and in any case shall allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond.* The district director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the district director has reasonable grounds to believe that the shipment may be brought into compliance, or when the district director deems it appropriate under § 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs Form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in § 113.14 of this chapter. If a shipment of chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the district director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the district director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the district director shall:

- (1) Refuse delivery to the importer, giving reasons for such refusal, or
- (2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the district director shall assess liquidated damages in the full amount of the bond.

§ 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of chemical substances, mixtures, or articles which has been detained under § 12.122 shall bring the

shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The district director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

- (1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or
- (2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

§ 12.125 Notice of exportation.

Whenever the Administrator directs the district director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the district director. The importer shall include the following information in the notice of exportation:

- (a) The name and address of the exporter or his agent;
- (b) A description of the chemical substances, mixtures, or articles exported;
- (c) The destination (country);
- (d) The port of arrival at the destination;
- (e) The carrier;
- (f) The date of exportation; and
- (g) The bill of lading or the air way bill number.

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the district director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

§ 12.127 Decision to store or dispose.

(a) A shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or disposition as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into

compliance with TSCA and has not exported the shipment within time limitations or extensions specified according to § 12.124. The importer shall remain liable for any expenses in the storage and/or disposal of abandoned merchandise.

(Sec. 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and sec. 624, 46 Stat. 759 (19 U.S.C. 1624))

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Part 127, Customs Regulations (19 CFR Part 127), is amended by adding a new paragraph (i) to § 127.28, to read as follows:

§ 127.28 Special merchandise.

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing a chemical substance or mixture, as these items are defined in section 3, Toxic Substances Control Act ("TSCA") and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of § 12.125 through 12.127 of this chapter.

(Sec. 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and secs. 484, 485, 624; 46 Stat. 759 (19 U.S.C. 1484, 1485, 1624))

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 154**

[CGD 83-033]

Operations Manual: Letter of Adequacy

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: On January 31, 1980, the Coast Guard published rules concerning oil pollution prevention by vessels and marine oil transfer facilities. Among other things, the rules required certain marine oil transfer facilities to obtain a Letter of Adequacy for the Operations